

Exhibit G

10-K 1 bioptix_10k-123116.htm FORM 10-K

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K

(Mark One)

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.

For the fiscal year ended December 31, 2016

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.

For the transition period from _____ to _____

Commission file number: 001-33675

Bioptix, Inc.

(Exact name of registrant as specified in charter)

Colorado

(State or other jurisdiction of incorporation or organization)

84-1553387

(IRS Employer Identification No.)

834-F South Perry Street, Suite 443

Castle Rock, CO

(Address of principal executive offices)

80104

(Zip Code)

Registrant's telephone number, including area code: **(303) 794-2000**

Securities registered under Section 12(b) of the Act:

Title of Each Class

Common Stock, No Par Value

Name of each exchange on which registered

NASDAQ Capital Market

Securities registered under Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known, seasoned issuer, as defined in Rule 405 of the Securities Act:

Yes ☐ No ☒

Indicate by check mark whether the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Exchange Act:

Yes ☐ No ☒

Indicate by check mark whether the registrant (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past twelve (12) months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☒ No ☐

Indicate by check mark if there is no disclosure of delinquent filers in response to Item 405 of Regulation S-K contained in this form, and no disclosure will be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by

reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company (as defined in Exchange Act Rule 12b-2).

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☐

Smaller reporting company ☒

(Do not check if smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act):

Yes ☐ No ☒

The aggregate market value of Common Stock held by non-affiliates of the registrant as of June 30, 2016, computed by reference to the closing price on that date was \$13,602,000.

The number of shares outstanding of the registrant's common stock at March 24, 2017, was 5,403,971.

BIOPTIX, INC.
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DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements contained in this Report that are not historical facts constitute forward-looking statements, within the meaning of the Private Securities Litigation Reform Act of 1995, and are intended to be covered by the safe harbors created by that Act. Reliance should not be placed on forward-looking statements because they involve known and unknown risks, uncertainties, and other factors, which may cause actual results, performance, or achievements to differ materially from those expressed or implied. Any forward-looking statement speaks only as of the date made. We undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date on which they are made.

These forward-looking statements are not guarantees of the future as there are a number of meaningful factors that could cause BiOptix Inc.'s actual results to vary materially from those indicated by such forward-looking statements. These statements are based on certain assumptions made based on experience, expected future developments and other factors BiOptix believes are appropriate in the circumstances. Factors which could cause actual results to differ from expectations, many of which are beyond the control of BiOptix, include, but are not limited to, our ability to: successfully identify a new strategic opportunity following the decision to exit the BiOptix Diagnostics, Inc., business, including negotiating a definitive agreement with such alternative target and, if applicable, obtain all necessary approvals, including shareholder approval, retain the necessary management team to advance the Company's strategic process, complete the orderly disposition of the BiOptix Diagnostics, Inc., assets and business, including settling any disputes or liabilities as they may arise, overcome adverse changes in market conditions, maintain, obtain and enforce intellectual property rights, realize value of intangible assets and deal with general business conditions; and other factors referenced herein in "Risk Factors."

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES.

(a) Exhibits

No. Exhibit

- 2.1 Stock Purchase Agreement, dated as of September 12, 2016, by and among Registrant, Venaxis Sub, Inc., as purchaser, BiOptix Diagnostics, Inc., the Sellers who are parties thereto, and the Seller Representative (incorporated by reference to the Registrant's Current Report on Form 8-K, dated September 12, 2016, and filed September 13, 2016).
- 3.1 Articles of Incorporation filed July 24, 2000 (Incorporated by reference from the Registrant's Registration Statement on Form S-1 (File No. 333-86190), filed April 12, 2002).
- 3.1.1 Articles of Amendment to the Articles of Incorporation filed December 26, 2001 (Incorporated by reference from the Registrant's Registration Statement on Form S-1 (File No. 333-86190), filed April 12, 2002).
- 3.1.2 Articles of Amendment to the Articles of Incorporation filed November 9, 2005 (Incorporated by reference from the Registrant's Report on Form 10-QSB for the quarter ended October 31, 2005, filed November 10, 2005).
- 3.1.3 Articles of Amendment to the Articles of Incorporation filed July 29, 2011 (Incorporated by reference from the Registrant's Report on Form 8-K, dated and filed July 29, 2011).
- 3.1.4 Addendum to Articles of Amendment to the Articles of Incorporation filed June 19, 2012 (Incorporated by reference from the Registrant's Report on Form 8-K, dated June 19, 2012 and filed June 20, 2012).
- 3.1.5 Articles of Amendment to the Articles of Incorporation, as amended, of Registrant, dated and filed December 12, 2012 (Incorporated by reference from the Registrant's Report on Form 8-K, dated December 11, 2012 and filed December 13, 2012).
- 3.1.6 Articles of Amendment to the Articles of Incorporation, as amended, of Registrant, dated and filed June 13, 2013 (Incorporated by reference from the Registrant's Report on Form 8-K dated June 11, 2013, filed on June 13, 2013).
- 3.1.7 Articles of Amendment to amend and restate the Articles of Incorporation, as amended, of Registrant, as of March 29, 2017 (Incorporated by reference from the Registrant's Report on Form 8-K, effective March 24, 2017 and filed March 29, 2017).
- 3.1.8 Articles of Amendment to amend and restate the Articles of Incorporation of Registrant, effective as of December 1, 2016 (Incorporated by reference from the Registrant's Report on Form 8-K, effective November 30, 2016 and filed December 2, 2016).
- 3.2 Amended and Restated Bylaws, effective March 27, 2008 (Incorporated by reference from the Registrant's Report on Form 10-Q for the quarter ended March 31, 2008 filed on May 15, 2008).
- 3.3 Form of Certificate of Designations, as of March 15, 2017 (Incorporated by reference from the Registrant's Report on Form 8-K, effective March 15, 2017 and filed March 17, 2017).
- 4.1 Specimen Certificate of Common Stock (Incorporated by reference from the Registrant's Report on Form 8-K, dated and filed June 25, 2012).
- 4.2 Form of Warrant between the Company and each of the investors signatories to the Securities Purchase Agreement dated December 23, 2011 (Incorporated by reference from the Registrant's Report on Form 8-K, dated December 23, 2011 and filed

December 28, 2011).

- 4.3 Form of Warrant between the Registrant and the underwriter under each of an Underwriting Agreement dated June 19, 2012, November 14, 2012 and November 15, 2012, respectively (Incorporated by reference to Exhibit A-13 of the Underwriting Agreement from the Registrant's Report on Form 8-K, dated June 19, 2012 and filed June 20, 2012).
- 4.4 Common Stock Purchase Warrant Agreement by and between Registrant and Corporate Stock Transfer, Inc. dated May 30, 2013 (Incorporated by reference from the Registrant's Report on Form 8-K dated May 30, 2013, filed on May 30, 2013).
- 4.5 Form of Warrant, as of March 10, 2017 (Incorporated by reference from the Registrant's Report on Form 8-K, effective March 10, 2017 and filed March 16, 2017).
- 4.6 Form of Note, as of March 15, 2017 (Incorporated by reference from the Registrant's Report on Form 8-K, effective March 15, 2017 and filed March 17, 2017).
- 4.7 Form of Warrant, as of March 15, 2017 (Incorporated by reference from the Registrant's Report on Form 8-K, effective March 15, 2017 and filed March 17, 2017).
- 10.1 2002 Stock Incentive Plan, as amended and restated effective July 1, 2007 (Incorporated by reference from the Registrant's Registration Statement on Form S-8, filed June 22, 2007).
 - 10.1.1 Amendment to 2002 Stock Incentive Plan, effective June 9, 2008 (Incorporated by reference from the Registrant's Report on Form 10-K for the year ended December 31, 2009, filed March 9, 2010).
 - 10.1.2 Amendment to Amended and Restated 2002 Stock Incentive Plan, effective November 20, 2009 (Incorporated by reference from the Registrant's Report on Form 10-K for the year ended December 31, 2009, filed March 9, 2010).
 - 10.1.3 Amendment to Amended and Restated 2002 Stock Incentive Plan, effective November 22, 2010 (Incorporated by reference from the Registrant's Report on Form 8-K, effective November 22, 2010 and filed November 29, 2010).
 - 10.1.4 Amendment to Amended and Restated 2002 Stock Incentive Plan, effective July 8, 2011 (Incorporated by reference from the Registrant's Report on Form 8-K, effective July 8, 2011 and filed July 13, 2011).
 - 10.1.5 Amendment to Amended and Restated 2002 Stock Incentive Plan, effective May 22, 2012 (Incorporated by reference from the Registrant's Report on Form 8-K, dated May 22, 2012 and filed May 24, 2012).
 - 10.1.6 Amendment to Amended and Restated 2002 Stock Incentive Plan, effective December 11, 2012 (Incorporated by reference from the Registrant's Report on Form 8-K, dated December 11, 2012 and filed December 13, 2012).
 - 10.1.7 Amendment to Amended and Restated 2002 Stock Incentive Plan, effective June 11, 2013 (Incorporated by reference from the Registrant's Report on Form 8-K dated June 11, 2013, filed on June 13, 2013).
 - 10.1.8 Amendment to Amended and Restated 2002 Stock Incentive Plan, effective June 25, 2014 (Incorporated by reference from the Registrant's Report on Form 8-K dated June 25, 2014, filed on June 26, 2014).
 - 10.1.9 Amendment to the Bioptix, Inc. Amended and Restated 2002 Stock Incentive Plan, as amended, effective September 1, 2015 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K dated September 1, 2015 and filed with the SEC on September 3, 2015).

- 10.1.10 Amended and Restated Equity Incentive Plan, effective November 30, 2016. 2017 (Incorporated by reference from the Registrant's Report on Form 8-K, effective November 30, 2016 and filed December 2, 2016).
- 10.2 Exclusive License Agreement between Registrant and The Washington University, dated May 1, 2004 as amended (Incorporated by reference from the Registrant's Report on Form 10-Q for the quarter ended June 30, 2010, filed August 5, 2010).
- 10.3 Debt Modification Agreement with FirstBank of Tech Center, dated June 13, 2003 (Incorporated by reference from the Registrant's Report on Form 10-KSB/A for the year ended December 31, 2004, filed March 29, 2004).
- 10.3.1 Loan Agreement between Registrant and Front Range Regional Economic Development Corporation, dated June 13, 2003 for \$1,300,000 regarding loan for physical plant or capital equipment acquisitions (Incorporated by reference from the Registrant's Report on Form 10-KSB/A for the year ended December 31, 2004, filed March 29, 2004).
- 10.3.2 Promissory Note by Registrant to Front Range Regional Economic Development Corporation in principal amount of \$1,300,000, dated June 13, 2003 (Incorporated by reference from the Registrant's Report on Form 10-KSB/A for the year ended December 31, 2004, filed March 29, 2004).
- 10.3.3 Unconditional Guarantee by Registrant to Front Range Regional Economic Development Corporation in principal amount of \$1,300,000, dated June 13, 2003 (Incorporated by reference from the Registrant's Report on Form 10-KSB/A for the year ended December 31, 2004, filed March 29, 2004).
- 10.3.4 Debt Modification Agreement between Registrant and FirstBank executed May 9, 2013, and effective as of April 8, 2013 (Incorporated by reference from the Registrant's Report on Form 8-K dated May 9, 2013, filed on May 9, 2013).
- 10.4 Executive Employment Agreement between Registrant and Jeffrey McGonegal, effective as of February 10, 2009 (Incorporated by reference from the Registrant's Report on Form 8-K dated February 10, 2009, filed on February 17, 2009).
- 10.5 Assignment and Consultation Agreement between Registrant and John Bealer, M.D., dated May 29, 2003 (Incorporated by reference from the Registrant's Report on Form 10-K for the year ended December 31, 2008, filed March 16, 2009).
- 10.6 Executive Employment Agreement between Registrant and Stephen T. Lundy, effective as of March 24, 2010 (Incorporated by reference from the Registrant's Report on Form 8-K dated March 24, 2010, filed March 26, 2010).
- 10.7 Form of Stock Option Agreement under the 2002 Stock Incentive Plan, as amended and restated and amended (Incorporated by reference from the Registrant's Report on Form 10-K for the year ended December 31, 2009, filed March 9, 2010).
- 10.8 Non-Employee Director Compensation (Incorporated by reference from the Registrant's Report on Form 10-K for the year ended December 31, 2014, filed March 30, 2015).
- 10.9 Executive Employment Agreement between Registrant and Donald Hurd, dated May 23, 2012 (Incorporated by reference from the Registrant's Report on Form 8-K, dated May 23, 2012 and filed May 24, 2012).
- 10.9.1 Separation and Release Agreement between the Registrant and Donald Hurd, dated February 23, 2015 (Incorporated by reference from the Registrant's Report on Form 8-K, dated February 11, 2015 and filed February 18, 2015).
- 10.10 Exclusive License Agreement between Ceva Santé Animale S.A. and Registrant, dated July 25, 2012 (Incorporated by reference from the Registrant's Report on Form 8-K, dated July 25, 2012 and filed July 30, 2012).

- 10.11 Form of Exclusive Distributor Agreement (Incorporated by reference to Exhibit 10.15 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2013 and filed March 28, 2014).
- 10.12 Underwriting Agreement, dated April 3, 2014 between the Registrant and Canaccord Genuity Inc. (Incorporated by reference to the Registrant's Report on Form 8-K, dated April 3, 2014 and filed on April 3, 2014).

- 10.13 Contract to Buy and Sell Real Estate, dated October 16, 2015, by and between Bioptix, Inc. as Seller and Tenant, and Niebur Golf Development LLC, as Buyer and Landlord (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, dated October 16, 2015 and filed with the SEC on October 21, 2015).
- 10.14 Master Agreement, dated January 26, 2016, by and among Strand Life Sciences Private Limited, Strand Genomics, Inc. and Bioptix, Inc. (Incorporated by reference to the Registrant's Report on Form 8-K, dated January 26, 2016 and filed on January 27, 2016).
- 10.15 Asset Purchase Agreement, dated January 26, 2016, by and between Strand Genomics, Inc., as seller, and Bioptix Sub, Inc., as buyer. (Incorporated by reference to the Registrant's Report on Form 8-K, dated January 26, 2016 and filed on January 27, 2016).
- 10.16 Form of Share Sale Agreement between Bioptix, Inc. and a Strand Life Sciences Private Limited Shareholder. (Incorporated by reference to the Registrant's Report on Form 8-K, dated January 26, 2016 and filed on January 27, 2016).
- 10.17 Form of Investment Agreement between Bioptix, Inc. and a Strand Life Sciences Private Limited Shareholder. (Incorporated by reference to the Registrant's Report on Form 8-K, dated January 26, 2016 and filed on January 27, 2016).
- 10.18 Form of Investment Agreement between Bioptix, Inc. and Biomark Capital Fund IV, L.P. (Incorporated by reference to the Registrant's Report on Form 8-K, dated January 26, 2016 and filed on January 27, 2016).
- 10.19 Mutual Termination Agreement, dated March 11, 2016, by and among Bioptix, Inc., Strand Life Sciences Private Limited and Strand Genomics, Inc. (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, filed March 14, 2016).
- 10.20 Registration Rights Agreement, dated as of September 12, 2016, by and among Venaxis, Inc. and the Sellers party thereto (incorporated by reference to the Registrant's Current Report on Form 8-K, dated September 12, 2016, and filed September 13, 2016).
- 10.21 Form of Lock-Up Agreement between Registrant and each of the Sellers (incorporated by reference to the Registrant's Current Report on Form 8-K, dated September 12, 2016, and filed September 13, 2016).
- 10.22 Offer Letter, dated September 15, 2016, to Richard J. Whitcomb (incorporated by reference to the Registrant's Current Report on Form 8-K, dated September 21, 2016, and filed September 27, 2016).
- 10.23 Agreement between Registrant and certain Shareholders, dated January 18, 2017. (Incorporated by reference from the Registrant's Report on Form 8-K, effective January 14, 2017 and filed January 20, 2017).
- 10.24 Form of Purchase Agreement, as of March 10, 2017 (Incorporated by reference from the Registrant's Report on Form 8-K, effective March 10, 2017 and filed March 16, 2017).
- 10.25 Form of Registration Rights Agreement, as of March 10, 2017 (Incorporated by reference from the Registrant's Report on Form 8-K, effective March 10, 2017 and filed March 16, 2017).
- 10.26 Form of Escrow Agreement, as of March 10, 2017 (Incorporated by reference from the Registrant's Report on Form 8-K, effective March 10, 2017 and filed March 16, 2017).
- 10.27 Form of Securities Escrow Agreement, as of March 10, 2017 (Incorporated by reference from the Registrant's Report on Form 8-K, effective March 10, 2017 and filed March 16, 2017).
- 10.28 Form of Purchase Agreement, as of March 15, 2017 (Incorporated by reference from the Registrant's Report on Form 8-K, effective March 15, 2017 and filed March 17, 2017).

- 10.29 Form of Registration Rights Agreement, as of March 15, 2017 (Incorporated by reference from the Registrant's Report on Form 8-K, effective March 15, 2017 and filed March 17, 2017).
- 10.30 Form of Cash Escrow Agreement, as of March 15, 2017 (Incorporated by reference from the Registrant's Report on Form 8-K, effective March 15, 2017 and filed March 17, 2017).
- 10.31 Form of Securities Escrow Agreement, as of March 15, 2017 (Incorporated by reference from the Registrant's Report on Form 8-K, effective March 15, 2017 and filed March 17, 2017).
- 14 Registrant's Code of Ethics (Incorporated by reference from the Registrant's Report on Form 10-K for the year ended December 31, 2012, filed March 26, 2013).
- 23.1 Consent of GHP Horwath, P.C. *
- 23.2 Consent of EisnerAmper LLP *
- 31.1 Rule 13a-14(a)/15d-14(a) - Certification of Chief Executive Officer *
- 31.2 Rule 13a-14(a)/15d-14(a) - Certification of Chief Financial Officer. *
- 32 Section 1350 Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. *
- 101 Interactive data files pursuant to Rule 405 of Regulation S-T: (i) the Balance Sheets, (ii) the Statements of Operations, (iii) Statements of Stockholders Equity, (iv) the Statement of Cash Flows and (v) the Notes to the Financial Statements *

* Filed herewith.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf on March 31, 2017 by the undersigned thereunto duly authorized.

BIOPTIX, INC.

/s/ Stephen T. Lundy

Stephen T. Lundy,
Chief Executive Officer

/s/ Jeffrey G McGonegal

Jeffrey G. McGonegal,
Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints each of Stephen T. Lundy and Jeffrey G. McGonegal as true and lawful attorney-in-fact and agent, with full power of substitution and re-substitution, for them and in their name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission (the "SEC"), and generally to do all such things in their names and behalf in their capacities as officers and directors to enable the Company to comply with the provisions of the Securities Exchange Act of 1934 and all requirements of the SEC, granting unto each said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, ratifying and confirming all that said attorney-in-fact and agent, or their or his or her substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Registrant on March 31, 2017 in the capacities indicated.

/s/ Stephen T. Lundy

Stephen T. Lundy,
Chief Executive Officer and Director (principal executive officer)

/s/ Jeffrey G. McGonegal

Jeffrey G. McGonegal, Chief Financial Officer (principal financial officer and principal accounting officer)

/s/ Michael M. Beeghley

Michael M. Beeghley, Chairman and Director

/s/ John R. O'Rourke

John R. O'Rourke, Director

/s/ Mike Dai

Mike Dai, Director

